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8 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 839-A

12 **FERNANDO PERALTA NUNEZ**
13 **6509 Painter Avenue**
Whittier, CA 90601

A C C U S A T I O N

14 **Civil Engineer License No. C 16581**
15 **Geotechnical Engineer License No. GE 649**

16 Respondent.

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18
19 Complainant alleges:

20 **PARTIES**

21 1. Joanne Arnold (Complainant) brings this Accusation solely in her official capacity as
22 the Interim Executive Officer of the Board for Professional Engineers and Land Surveyors,
23 Department of Consumer Affairs.

24 2. On or about August 18, 1966, the Board for Professional Engineers and Land
25 Surveyors issued Civil Engineer License Number C 16581 to Fernando Peralta Nunez
26 (Respondent). The Civil Engineer License was in full force and effect at all times relevant to the
27 charges brought herein and will expire on June 30, 2011, unless renewed.

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3. On or about September 9, 1987, the Board for Professional Engineers and Land Surveyors issued Geotechnical Engineer License Number GE 649 to Fernando Peralta Nunez (Respondent). The Geotechnical Engineer License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2011, unless renewed.

JURISDICTION

4. This Accusation is brought before the Board for Professional Engineers and Land Surveyors (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

6. Section 6775 of the Code states, in pertinent part:

“(T)he board may reprove, suspend for a period not to exceed two years, or revoke the certificate of any professional engineer registered under this chapter:

• • •

(c) Who has been found guilty by the board of negligence or incompetence in his or her practice.

(d) Who has been found guilty by the board of any breach or violation of a contract to provide professional engineering services.

• • •

(h) Who violates any provision of this chapter.”

7. Code section 6749, subdivision (a), provides, in part, as follows:

“(a) A professional engineer shall use a written contract when contracting to provide professional engineering services to a client pursuant to this chapter. The written contract shall be executed by the professional engineer and the client, or his or her representative, prior to the professional engineer commencing work, unless the client knowingly states in writing that work

1 may be commenced before the contract is executed. The written contract shall include, but not be
2 limited to, all of the following:

3 . . .

4 (3) The name, address, and license or certificate number of the professional
5 engineer, and the name and address of the client.

6 . . .

7 (5) A description of the procedure to be used by any party to terminate the
8 contract.”

9 8. Code section 8731 states:

10 “A registered civil engineer and a civil engineer exempt from registration under Chapter 7
11 (commencing with Section 6700) of Division 3 are exempt from licensing under this chapter and
12 may engage in the practice of land surveying with the same rights and privileges, and the same
13 duties and responsibilities of a licensed land surveyor, provided that for civil engineers who
14 become registered after January 1, 1982, they shall pass the second division examination provided
15 for in Section 8741 and obtain a land surveyor's license, before practicing land surveying as
16 defined in this chapter.”

17 9. Code section 8780 provides, in pertinent part, as follows:

18 “The board may receive and investigate complaints against licensed land surveyors and
19 registered civil engineers, and make findings thereon. By a majority vote, the board may reprove,
20 suspend for a period not to exceed two years, or revoke the license or certificate of any licensed
21 land surveyor or registered civil engineer, respectively, licensed under this chapter or registered
22 under the provisions of Chapter 7 (commencing with Section 6700), whom it finds to be guilty of:

23 . . .

24 (d) Any violation of any provision of this chapter or of any other law
25 relating to or involving the practice of land surveying.

26 . . .

27 (g) A breach or violation of a contract to provide land surveying services.

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1 (h) A violation in the course of the practice of land surveying of a rule or
2 regulation of unprofessional conduct adopted by the board.”

3 10. Code section 8759, subdivision (a), provides, in part, as follows:

4 “(a) A licensed land surveyor or registered civil engineer authorized to practice land
5 surveying shall use a written contract when contracting to provide professional services to a client
6 pursuant to this chapter. The written contract shall be executed by the licensed land surveyor or
7 registered civil engineer and the client, or his or her representative, prior to the licensed land
8 surveyor or registered civil engineer commencing work, unless the client knowingly states in
9 writing that work may be commenced before the contract is executed. The written contract shall
10 include, but not be limited to, all of the following:

11 . . .

12 (3) The name, address, and license or certificate number of the licensed land surveyor or
13 registered civil engineer, and the name and address of the client.

14 . . .

15 (5) A description of the procedure to be used by any party to terminate the contract.”

16 11. Code section 8767 provides as follows:

17 “If the county surveyor finds that the record of survey complies with the examination in
18 Section 8766, the county surveyor shall endorse a statement on it of his or her examination, and
19 shall present it to the county recorder for filing. Otherwise the county surveyor shall return it to
20 the person who presented it, together with a written statement of the changes necessary to make it
21 conform to the requirements of Section 8766. The licensed land surveyor or registered civil
22 engineer submitting the record of survey may then make the agreed changes and note those
23 matters which cannot be agreed upon in accordance with the provisions of Section 8768 and shall
24 resubmit the record of survey within 60 days, or within the time as may be mutually agreed upon
25 by the licensed surveyor or registered engineer and the county surveyor, to the county surveyor
26 for filing pursuant to Section 8768.”

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12. Code section 8773.2, subdivision (b), provides as follows:

“(b) In the event the submitted ‘corner record’ fails to comply with the examination criteria of subdivision (a), the county surveyor or engineer shall return it to the person who submitted it together with a written statement of the changes necessary to make it conform to the requirements of subdivision (a). The licensed land surveyor or licensed civil engineer submitting the corner record may then make the agreed changes in compliance with subdivision (a) and note those matters that cannot be agreed upon in accordance with the provisions of subdivision (c), and shall resubmit the corner record within 60 days, or within the time as may be mutually agreed upon by the licensed land surveyor or licensed civil engineer and the county surveyor, to the county surveyor for filing pursuant to subdivision (c). The county surveyor or engineer shall file the corner record within 10 working days after receipt of the resubmission.”

13. California Code of Regulations, Title 16, section 464, subdivision (w), provides:

“For the sole purpose of investigating complaints and making findings thereon under Sections 6775 and 8780 of the Code, ‘negligence’ as used in Sections 6775 and 8780 of the Code is defined as the failure of a licensee, in the practice of professional engineering or land surveying, to use the care ordinarily exercised in like cases by duly licensed professional engineers and land surveyors in good standing.”

14. California Code of Regulations, Title 16, section 464, subdivision (n), provides:

“For the sole purpose of investigating complaints and making findings thereon under Sections 6775 and 8780 of the Code, ‘incompetence’ as used in Sections 6775 and 8780 of the Code is defined as the lack of knowledge or ability in discharging professional obligations as a professional engineer or land surveyor.”

COST RECOVERY

15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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AHAMED PROPERTY – RANCHO PALOS VERDES

16. Respondent was hired to prepare a soils report and a grading plan for a single family residence to be built for Mr. Sultan Ahamed, located at 6270 Ocean Terrace, in Rancho Palos Verdes, California. On or about December 17, 1998, Nunez Engineering prepared a topographic survey map for the Ahamed project. This topographic map shows the patio/house setback to be twenty feet from the southerly property line. This original topographic map was in error regarding the southerly setback.

17. A second similar topographic map showing the same data and still containing the Nunez Engineering title block was submitted to the City of Rancho Palos Verdes [City], with added details, notations, notes and computations. This second map shows the proposed house/patio setback located twenty feet from the southerly trail easement and not the property line. This second survey map indicates it was prepared by David Li. In October, 1999, the City issued a building permit based upon the second topographic survey map.

18. The site contractor for the home was Elite Homes. Respondent was requested by the contractor to come to the site and stake the location of the house so construction could begin. Respondent staked the building location based on his original topographic survey map and did not know changes had been made to the site drawing. Respondent did not use the permitted plans for his staking work. On or about November 11, 1999, Respondent certified by seal and signature that he “surveyed” the location of the pertinent features at the building site and found the setbacks in conformance with the City approved plans.

19. In fact, the site construction did not conform to the approved permitted plans and the residence was constructed in the wrong location. Variations from the approved plans included grading that extended onto adjacent properties, the structure was placed inside of the building setback limits, and the rear deck extended into a restricted building zone. The City would not issue a Certificate of Occupancy to allow the owner use of the premises until the grading and setback discrepancies were remedied.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Incompetence and / or Negligence)

3 20. Respondent is subject to disciplinary action under section 6775, subdivision (c), of
4 the Code in that Respondent failed to use the care ordinarily exercised in like cases by a duly
5 licensed professional engineer, or in the alternative, lacked the requisite knowledge and skill to
6 discharge his duties. The circumstances are as follows:

7 a) Respondent improperly and inaccurately performed measuring and staking work on
8 the Ahamed Project, as more fully set forth in paragraphs 16 through 19, above, upon which
9 others relied and were damaged.

10 EDWARDS PROJECT – MONTECITO DRIVE

11 21. On or about April 10, 2002, Audrey Edwards entered into a contract with Respondent
12 for a "Soils and Geological Investigation" for a proposed two story residence, located on a
13 sloping site at 7171 Montecito Drive in Los Angeles, California. The total contract cost was
14 \$2,800.00 and Ms. Edwards paid a retainer of \$1,400.00 to Respondent to begin work on the
15 project.

16 22. On or about September 19, 2002, Respondent provided Ms. Edwards, outside of the
17 contract terms, with a plot plan and three cross section for the Montecito drive property.
18 Respondent did not, however, provide Ms. Edwards with the soils report that was the basis of the
19 contract.

20 23. On or about November 5, 2002, Respondent provided a new plot plan and three cross
21 section for the site. The soils report was not provided.

22 24. On or about February 13, 2003, Ms. Edwards hired Quartech Consultants, Inc. to
23 provide the soils and geological report. Quartech finished the work in a timely manner and was
24 paid in full by March 7, 2003.

25 25. Ms. Edwards sent Respondent a letter dated February 21, 2003, terminating his
26 contract and demanding repayment of the \$1,400.00 retainer fee. Ms. Edwards received a total
27 refund of \$1,000.00.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Incompetence)

3 26. Respondent is subject to disciplinary action under section 6775, subdivision (c), of
4 the Code in that Respondent was incompetent and lacked the requisite knowledge and skill to
5 discharge his duties. The circumstances are as follows:

6 a) Respondent failed to complete and provide the soils and geological report within a
7 reasonably professional time as more fully set forth in paragraphs 21 to 25, above.

8 THIRD CAUSE FOR DISCIPLINE

9 (Breach and / or Violation of Contract)

10 27. Respondent is subject to disciplinary action under section 6775, subdivision (d), of
11 the Code in that Respondent was in breach and/or violation of the contract to provide professional
12 engineering services for the Montecito Project due to his nonperformance and abandonment of
13 the work as more fully set forth in paragraphs 21 to 25, above.

14 VERDUZCO PROJECT – LA HABRA

15 28. In 2005, Respondent contracted with Gavino and Darlene Verduzco to perform a
16 boundary survey to mark the corners of the lot and to show the easements on the survey map for a
17 property located at 1050 Russell Street, in La Habra, California.

18 29. On or about August 18, 2003, the Orange County Public Facilities and Resources
19 Department (Surveyor's Office) received a Corner Record on the La Habra property prepared by
20 Respondent.

21 30. In a letter dated September 8, 2003, the Surveyor's Office returned the Corner Record
22 to Respondent indicating that, unless sufficient additional monumentation could be found and
23 made a part of the record, a more complex Record of Survey may be required. Respondent
24 ignored this letter and failed to resubmit a correct Corner Record or a Record of Survey for the La
25 Habra property.

26 31. Respondent failed to file a Corner Record pursuant to the contract with the Veduzcos.

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1 FOURTH CAUSE FOR DISCIPLINE

2 (Violations of Provisions of Act)

3 32. Respondent is subject to disciplinary action under section 8780, subdivision (d), in
4 that he violated provisions of the Land Surveyors' Act (§§8700, *et seq.*) and laws relating to the
5 practice of land surveying. The circumstances are as follows:

6 a) Sections 8767 and 8773.2, subdivision (b): Respondent failed to re-submit the Corner
7 Report to the County Surveyor within the required sixty days, as more fully set forth in
8 paragraphs 28 to 31, above.

9 b) Section 8759, subdivision (a)(3): Respondent failed to include his license number on
10 the contract with the Verduzcos.

11 c) Section 8759, subdivision (a)(5): Respondent's contract with the Verduzcos failed to
12 describe the procedure for any party to terminate the contract.

13 FIFTH CAUSE FOR DISCIPLINE

14 (Breach and / or Violation of Contract)

15 33. Respondent is subject to disciplinary action under section 8780, subdivision (g), in
16 that Respondent breached and/or violated his contract with the Verduzcos due to his failure to file
17 a Corner Record with the County Surveyor, as more fully set forth in paragraphs 28 to 31, above.

18 VARGAS PROPERTY – GLENALBYN DRIVE

19 34. On or about April 1, 2004, Respondent contracted with Manual Vargas to prepare an
20 updated soils and geologic reports for the proposed construction of two new homes on Lots 3 and
21 4 of Tract 9303 on Glenalbyn Drive in Mt. Washington, California. Nunez Engineering had
22 previously completed soils and geological reports on both of these lots. The total contract price
23 was \$1,600.00 and Mr. Vargas paid Respondent an \$800.00 retainer to begin work on the project.

24 35. Mr. Vargas sent Respondent a written inquiry as to the status of the soil and
25 geological report on or about June 23, 2004. Respondent did not provide the soil and geological
26 report.

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36. On or about September 1, 2004, Mr. Vargas demanded, via certified mail, a refund for his retainer fees since Respondent had not completed the updated soils and geologic report. Mr. Vargas did not receive his \$800.00 refund until January 2005.

SIXTH CAUSE FOR DISCIPLINE

(Incompetence)

37. Respondent is subject to disciplinary action under section 6775, subdivision (c), of the Code in that Respondent was incompetent and lacked the requisite knowledge and skill to discharge his duties. The circumstances are as follows:

a) Respondent failed to complete and provide the updated soils and geological report within a reasonably professional time as more fully set forth in paragraphs 34 to 36, above.

SEVENTH CAUSE FOR DISCIPLINE

(Breach and / or Violation of Contract)

38. Respondent is subject to disciplinary action under section 6775, subdivision (d), of the Code in that Respondent was in breach and/or violation of the contract to provide professional engineering services for the Vargas Project due to his nonperformance and abandonment of the work as more fully set forth in paragraphs 34 to 36, above.

EIGHTH CAUSE FOR DISCIPLINE

(Violations of Provisions of Act)

39. Respondent is subject to disciplinary action under section 6775, subdivision (h), in that he violated provisions of the Professional Engineers Act (§§6700, *et seq.*) and laws relating to the practice of professional engineering. The circumstances are as follows:

a) Section 6749, subdivision (a)(3): Respondent failed to include his license number on the contact with Mr. Vargas.

b) Section 6749, subdivision (a)(5): Respondent's contract with Mr. Vargas failed to describe the procedure for any party to terminate the contract.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a decision:

1. Revoking or suspending Civil Engineer License Number C 16581, issued to Fernando Peralta Nunez.
2. Revoking or suspending Geotechnical Engineer License Number GE 649, issued to Fernando Peralta Nunez.
3. Ordering Fernando Peralta Nunez to pay the Board for Professional Engineers and Land Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
4. Taking such other and further action as deemed necessary and proper.

DATED: May 28, 2009

Original Signed

JOANNE ARNOLD
Interim Executive Officer
Board for Professional Engineers and Land Surveyors
Department of Consumer Affairs
State of California
Complainant

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